BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5376 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JAMES SKINNER
(Claimant)
S.S.A. No.

FRED E. CARNIE & SON
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-192

FORMERLY
BENEFIT DECISION
No. 5376

The above-named claimant on January 10, 1949, appealed to a Referee from a determination of the Department of Employment disqualifying him for benefits under Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code). On February 2, 1949, the Referee issued a decision (S-8926) reversing the determination of the Department but disqualifying the claimant for benefits under Section 58(a)(1) of the Act (now section 1256 of the code), on the ground that although the claimant had not been discharged for misconduct the circumstances under which he lost his work were such as to constitute a voluntary leaving of work without good cause. On March 25, 1949, the California Unemployment Insurance Appeals Board set aside the Referee's decision pursuant to Section 72 of the Act (now section 1336 of the code) and removed the matter to itself for decision. On May 4, 1949, the matter was scheduled for oral argument, before the Appeals Board and the employer and the claimant appeared and presented oral argument.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed prior to filing the claim in issue by the above named employer, a tent and awning manufacturer in Sacramento, for over a year. On December 28, 1948, the claimant was discharged by the said employer, assertedly for misconduct.

On January 3, 1949, the claimant registered for work and filed a claim for benefits in the Sacramento office of the Department. On January 4, 1949, the Department determined that the claimant had been discharged for misconduct connected with his most recent work and disqualified him for benefits under Section 58(a)(2) (now section 1256 of the code) for the five weeks January 3, 1949, to February 6, 1949. The Referee reversed this determination as aforesaid and imposed a disqualification for benefits under Section 58(a)(1) of the Act (now section 1256 of the code) on the ground that the claimant had "constructively voluntarily quit suitable work without good cause", whereupon the proceedings hereinabove mentioned ensued.

In December, 1947, the claimant engaged in a physical encounter with a fellow worker in the shop in which he was employed. This resulted in a strained relationship between the claimant and such other worker, which continued until the claimant's discharge. The claimant testified that as this situation endured, it became progressively more difficult for him to remain in his employment. In September, 1948, the claimant took steps to notify his employer that he was quitting. The employer testified that he was unaware of any attempt to quit by the claimant, but the record shows that there occurred some discussion between the claimant and the employer during which the employer gave the claimant "a talk on unity."

The claimant began a vacation on December 24, 1948, expecting to return to work at its conclusion. Four days later he was notified by the employer that he would not be expected back at work. On inquiry the claimant found that this action had been influenced by complaints against him made by the worker with whom he had fought and another. The evidence discloses that after the claimant had left for his vacation these two

workers had informed the employer that he must either dismiss the claimant or lose their services. The claimant was separated on this account.

The record indicates that the claimant is a man of quick temper and sensitive disposition. As the claimant himself put it: "I get thoroughly disgusted with situations, and people think I have a bad temper . . . I don't have to be in a hot temper to strike a man. If I want to straighten out a situation I get disgusted and don't care what happens." The employer admits that he discharged the claimant, asserts that he did so because he was a troublesome employee, and contends that the discharge was for misconduct.

REASON FOR DECISION

The record clearly shows that the claimant's separation from his work resulted from a dismissal by the employer. The only issue presented by this case is therefore whether or not the discharge was for misconduct. In ruling upon this issue, this Board can be concerned only with the circumstances which brought about the discharge. The propriety of the employer's exercise of his unquestioned right to discharge the claimant is not in question. Only if the acts or omissions of the claimant which gave rise to the discharge constitute misconduct within the meaning of Section 58(a)(2) of the Act (now section 1256 of the code) may the claimant be disqualified; if they do not, the claimant may not be disqualified even though the employer's action was fully justifiable.

The term "misconduct" is left undefined in the Act. In Benefit Decision No. 4659-9005 this Board accepted and applied the definition of the Wisconsin Supreme Court laid down in Boynton Cab Company vs. Neubeck, 237 Wis. 249; 296 NW 636. Insofar as it is applicable to this case that definition reads:

> "The term 'misconduct' is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee . . . or (showing) an intentional and substantial

> disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, . . . unsatisfactory conduct . . . or good faith errors in judgement or discretion are not to be deemed misconduct."

This definition sets up the standards which are determinative of the question confronting us in this case.

The record indicates that the primary reasons which motivated the employer in discharging the claimant were the latter's "unfortunate disposition" and his alleged inability "to get along with his fellow employees." Standing alone, these reasons do not fall within the definition of misconduct hereinabove set forth. While the claimant's conduct on the job may have been unsatisfactory, and though he may be chargeable with errors of discretion in his relations with his co-workers, there is nothing to show that during the year following the altercation of 1947, the claimant deliberately followed a course of action which was in wilful or wanton disregard either of his obligations as an employee or of the interests of his employer.

Had the claimant been dismissed after the altercation with the co-worker whose complaint set his discharge in motion, that termination would have been for misconduct, as the claimant freely admits. But though this incident may have had some influence on the employer's decision to discharge the claimant, it was not the basic reason for the discharge. This is demonstrated by the employer's retention of the claimant in his employ for over a year, by the fact that the claimant was not separated following his attempt in September 1948, to indicate a desire to resign, and particularly by the fact that the claimant was not discharged until the employer was presented with his co-workers' ultimatum. A direct and proximate causal relationship between specific acts of misconduct and a discharge must be shown if a disqualification for benefits is to be assessed for such acts. It is concluded that the claimant's discharge of December 28, 1948, was not for misconduct and that he was therefore not subject to disqualification for benefits under Section 58(a)(2) of the Act (now section 1256 of the code) with respect thereto.

DECISION

The determination of the Department is reversed. Benefits are allowed for the five weeks January 3 to February 6, 1949, if the claimant is otherwise eligible.

Sacramento, California, May 19, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5376 is hereby designated as Precedent Decision No. P-B-192.

Sacramento, California, January 27, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT